

ORDINANCE NO. ____

AN ORDINANCE OF THE MARIN TELECOMMUNICATIONS
AGENCY ADOPTING A TELECOMMUNICATIONS
REGULATORY ORDINANCE

FOLLOWS:
THE MARIN TELECOMMUNICATIONS AGENCY DOES ORDAIN AS

as follows:
SECTION 1. A "Telecommunications Regulatory Ordinance" is adopted to read

"TELECOMMUNICATIONS REGULATORY ORDINANCE

ARTICLE 1. GENERAL PROVISIONS

Section 1.0 Title

This ordinance is known and may be cited as the "Telecommunications
Regulatory Ordinance" of the Marin Telecommunications Agency.

Section 1.1 Purpose and Intent

A. The Marin Telecommunications Agency, finds and determines as
follows:

1. The development of cable television and other
telecommunications systems may provide significant benefits for, and have substantial impacts
upon, subscribers within the jurisdiction of the Agency.

2. Due to the complex and rapidly changing technology
associated with telecommunications services and systems, the public convenience, safety, and
general welfare can best be served by the Agency's exercise of its regulatory powers.

3. This ordinance is intended to establish regulatory
provisions that authorize the Agency to regulate cable television services, open video systems,
and other specified telecommunications services and systems to the extent authorized by federal
and state law and the Constituent Jurisdictions. This authorization includes, but is not limited to,
the federal Cable Communications Policy Act of 1984, as amended by the federal Cable
Television Consumer and Competition Act of 1992 and the federal Telecommunications Act of
1996, applicable regulations of the Federal Communications Commission, applicable California
statutes and regulations, and the ordinances adopted by the Constituent Jurisdictions establishing
the Agency. This ordinance supplements the telecommunications regulations adopted by each
Constituent Jurisdiction when the Agency was established.

B. The purpose and intent of this ordinance is to achieve the following
objectives:

1. To enable the Agency to discharge its public trust in a manner consistent with rapidly evolving federal and state regulatory policies, industry competition, and technological development.

2. To promote competition in cable television and telecommunications services, minimize unnecessary local regulation of cable television and telecommunications service providers, and encourage the delivery of advanced and competitive cable television and telecommunications services on the broadest possible basis to the residents, businesses, institutions, and public agencies within the jurisdiction of the Agency.

3. To establish clear local guidelines, standards, and time frames for the regulation of cable television services, open video systems, and other telecommunications service providers, including the establishment and enforcement of customer service standards and technical standards.

4. To encourage the profitable deployment of advanced telecommunications infrastructures that satisfy local needs, deliver enhanced services, and provide informed consumer choices in an evolving telecommunications market.

Section 1.2 Defined Terms and Phrases

For the purposes of this ordinance, the following words, terms, phrases, and their derivations have the meanings set forth below. Words used in the present tense include the future tense, and words in the singular number include the plural number. Words not defined are to be given their common and ordinary meaning.

"Agency" means the Marin Telecommunications Agency as represented by its Board of Directors or by any delegate acting within the scope of its delegated authority.

"Board" or "Board of Directors" means the duly constituted governing board of the Agency.

"Cable service" means the one-way transmission to subscribers of video programming, or other programming services, and subscriber interaction, if any, that is required for the selection or use of that video programming or other programming service. For the purposes of this definition, "video programming" means programming provided by, or generally considered comparable to programming provided by, a television broadcast station; and "other programming service" means information that a cable system operator makes available to all subscribers generally. "Cable service" also includes any other service provided over the cable system that is considered a cable service under federal or state law, the franchise agreement, or cable industry practice.

"Cable system," or "cable communications system" or "cable television system," means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service that includes video programming and that is provided to multiple subscribers within a community. The term "cable system" does not include:

- (i) a facility that serves only to retransmit the television signals of one or more television broadcast stations;
- (ii) a facility that serves subscribers without using any public right-of-way;
- (iii) a facility of a common carrier that is subject, in whole or in part, to the provisions of Title II of the Telecommunications Act of 1996, except that such facility will be considered a cable system (other than for purposes specified in Section 621(c) of the 1984 Cable Act) to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services;
- (iv) an open video system that complies with Section 653 of Title VI of the Telecommunications Act of 1996; or
- (v) any facilities of an electric utility that are used solely for operating its electric utility system.

"Cable system operator" means any person or group of persons:

- (i) who provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in that cable system; or
- (ii) who otherwise controls or is responsible for, through any arrangement, the management and operation of that cable system.

"_____ CFR § _____" means the Code of Federal Regulations. As an example, the citation of "47 CFR 80.1" refers to Title 47, part 80, section 1, of the Code of Federal Regulations.

"Communications Act" means the Communications Act of 1934 (48 Stat. 1064, enacted June 19, 1934), as amended by the Cable Communications Policy Act of 1984 (Public Law No. 98-549, enacted October 30, 1984), the Cable Television Consumer Protection and Competition Act of 1992 (Public Law No. 102-385, enacted October 5, 1992), and the Telecommunications Act of 1996 (Public Law No. 104-104, enacted February 8, 1996). The Communications Act is codified at 47 U.S.C. §§ 151-613.

"Constituent Jurisdictions" mean the member public agencies of the Agency.

"Executive Director" means the authorized administrative head of the Marin Telecommunications Agency, or that person's designated representative.

"FCC" or "Federal Communications Commission" means the federal administrative agency, or any lawful successor, that is authorized by federal law to regulate telecommunications services and telecommunications service providers.

"Franchise" means an initial authorization, or the renewal of an initial authorization, issued by or transferred to the Agency, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, that authorizes the construction or operation of a cable system.

"Franchise fee" means any fee or assessment of any kind that is authorized by state or federal law to be imposed by a local franchising authority on a Grantee as compensation in the nature of rent for the Grantee's use of the public rights-of-way. The term "franchise fee" does not include:

- (i) Any tax, fee, or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and cable operators or their services);
- (ii) Capital costs that are required by the franchise to be incurred by the Grantee for public, educational, or governmental access facilities;
- (iii) Costs or charges that are incidental to the award or enforcement of the franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages; or
- (iv) Any fee imposed under Title 17, United States Code.

"Franchise service area" or "service area" means the entire geographic area of the Constituent Jurisdictions as they are now constituted, or may in the future be constituted, unless otherwise specified in the ordinance or resolution granting a franchise, or in a franchise agreement.

"Grantee" means any person that is awarded a franchise in accordance with this ordinance, and that person's lawful successor, transferee, or assignee.

"Gross annual cable service revenues" means the annual gross revenues derived from the Grantee's operations of its cable television system to provide cable services within the franchise service area, excluding uncollected bad debt, refundable deposits, rebates or credits, and further excluding any sales, excise, or other taxes or charges that are required to be collected for direct pass-through to the local, state or federal government. Revenues identified and collected from subscribers as franchise fees may not be excluded from a Grantee's gross annual cable service revenues.

"Gross annual telecommunications service revenues" means the annual revenues received by a Grantee from the operation of a cable system to provide telecommunications services other than cable services.

"Multichannel video programming distributor" or "video programming distributor" means a person such as, but not limited to, a cable system operator, a multichannel multipoint distribution service, a direct broadcast satellite service, or a television receive-only satellite program distributor, who makes available multiple channels of video programming for purchase by subscribers or customers.

"Open video system" means a facility consisting of a set of transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service, including video programming, and that is provided to multiple subscribers within the franchise service area, provided that the FCC has certified that such system complies with 47 CFR § 1500 et seq., entitled "Open Video Systems."

"Open video system operator" means any person or group of persons who provides cable service over an open video system and directly or through one or more affiliates owns a significant interest in that open video system, or otherwise controls or is responsible for the management and operation of that open video system.

"Person" means an individual, partnership, association, joint stock company, trust, corporation, or governmental entity.

"Public, educational or government access facilities" or "PEG access facilities," means the total of the following:

- (i) Channel capacity designated for noncommercial public, educational, or government use; and
- (ii) Facilities and equipment for the use of that channel capacity.

"Subscriber" or "customer" or "consumer" means any person who, for any purpose, subscribes to the services provided by a multichannel video programming distributor and who pays the charges for those services.

"Street" or "public way" means each of the following that has been dedicated to the public and maintained under public authority or by others and is located within the franchise service area: streets, roadways, highways, avenues, lanes, alleys, sidewalks, easements, rights-of-way, and similar public property that is from time to time authorized to be included within the definition of a street.

"Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

"Telecommunications equipment" means equipment, other than customer premises equipment, used by a telecommunications service provider to provide telecommunications service, including software that is integral to that equipment.

"Telecommunications service" means the offering of telecommunications directly to the public for a fee, or to such classes of users as to be effectively available directly to the public, regardless of the equipment or facilities that are used.

"Telecommunications service provider" means any provider of telecommunications service.

"____ U.S.C. § ____" means the United States Code. As an example, the citation of "47 U.S.C. § 153" refers to Title 47, section 153, of the United States Code.

"Video programming provider" means any person or group of persons who has the right under the federal copyright laws to select and to contract for the carriage of specific video programming on an open video system.

"Video provider" means any person, company, or service that provides one or more channels of video programming to a residence, including a home, condominium, apartment, or mobilehome, where some fee is paid for that service, whether directly or as included in dues or rental charges, and whether or not public rights-of-way are used in the delivery of that video programming. A "video provider" includes, without limitation, providers of cable television service, master antenna television, satellite master antenna television, direct broadcast satellite, multipoint distribution services, and other providers of video programming, whatever their technology.

ARTICLE 2. CABLE TELEVISION SYSTEMS

Section 2.0 Agency and Findings

A. In accordance with applicable federal and state law, the Agency is authorized to grant one or more nonexclusive franchises to construct, reconstruct, operate, and maintain cable television systems within the jurisdiction of the Agency.

B. The Agency finds that the development of cable television and related telecommunications services may provide significant benefits for, and substantial impacts upon, the residents and the business community within the jurisdiction of the Agency. Due to the complex and rapidly changing technology associated with cable services, the Agency further finds that the public convenience, safety, and general welfare can best be served by the Agency's exercise of its regulatory powers. This Article 2 is intended to specify the means for providing to the public the best possible cable television and related telecommunications services, and every franchise issued in accordance with this Article 2 is intended to achieve this primary objective. It is the further intent of this Article 2 to adopt regulatory provisions that will enable the Agency to regulate cable television and other specified telecommunications services to the maximum extent authorized by federal and state law.

Section 2.1 Franchise Terms and Conditions

● Franchise Purposes

A franchise granted by the Agency under the provisions of this article may authorize the Grantee to do the following:

1. To engage in the business of providing cable service and such other telecommunications services as may be authorized by law and which Grantee elects to provide to its subscribers within the designated franchise service area.

2. To maintain and operate the franchise properties for the origination, reception, transmission, amplification, and distribution of television and radio signals, and for the delivery of cable services and such other services as may be authorized by law.

3. To erect, install, construct, repair, rebuild, reconstruct, replace, maintain, and retain, cable lines, related electronic equipment, supporting structures, appurtenances, and other property in connection with the operation of the cable system in, on, over, under, upon, along and across streets or other public places within the designated franchise service area.

B. Franchise Required

It is unlawful for any person to construct, install, or operate a cable television system within any street or public way in the area under the jurisdiction of the Agency without first obtaining a franchise under the provisions of this article.

C. Term of the Franchise

1. A franchise granted under this article will be for the term specified in the franchise agreement, commencing upon the effective date of the ordinance or resolution adopted by the Agency that authorizes the franchise.

2. A franchise granted under this article or a franchise granted by a Constituent Jurisdiction and transferred to the Agency may be renewed upon application by the Grantee in accordance with the then-applicable provisions of state and federal law and of this article.

D. Franchise Territory

A franchise is effective within the entire area that is subject to the jurisdiction of the Agency unless otherwise specified in the ordinance or resolution granting the franchise or in the franchise agreement.

E. Federal or State Jurisdiction

This article will be construed in a manner consistent with all applicable federal and state laws, and it applies to all franchises granted or renewed after the effective date of this article, to the extent authorized by applicable law.

F. Franchise Non-Transferable

1. The Grantee may not sell, transfer, lease, assign, sublet, or dispose of, in whole or in part, either by forced or involuntary sale, or by ordinary sale, contract, consolidation, or otherwise, the franchise or any of the rights or privileges therein granted, without the prior consent of the Agency and then only upon such terms and conditions as may be prescribed by the Agency, which consent may not be unreasonably denied or delayed. Any attempt to sell, transfer, lease, assign, or otherwise dispose of the franchise without the consent of the Agency is null and void. The granting of a security interest in any assets of the Grantee, or any mortgage or other hypothecation, will not be deemed a transfer for the purposes of this subsection.

2. The requirements of subsection (1) apply to any change in control of the Grantee or any parent company of the Grantee. The word "control" as used herein is not limited to the ownership of major stockholder or partnership interests, but includes actual working control in whatever manner exercised. If the Grantee is a corporation, prior authorization of the Agency is required where ownership or control of twenty-five percent (25%) or more of the voting stock of the Grantee is acquired by a person or a group of persons acting in concert, none of whom, singularly or collectively, owns or controls the voting stock of the Grantee as of the effective date of the franchise. A transfer of the franchise from one wholly owned subsidiary to another wholly owned subsidiary of the parent company shall not be considered a change or control or a transfer of the franchise for the purposes of this Section 2.1(F).

3. The Grantee must notify the Agency in writing of any foreclosure or judicial sale of all or a substantial part of the Grantee's franchise property. That notification will be considered by the Agency as notice that a change in control of ownership of the franchise has taken place, and the provisions of this paragraph that require the prior consent of the Agency to that change in control of ownership will apply.

4. For the purpose of determining whether it will consent to an acquisition, transfer, or change in control, the Agency may inquire as to the qualifications of the prospective transferee or controlling party, and the Grantee must assist the Agency in that inquiry. In seeking the Agency's consent to any change of ownership or control, the Grantee or the proposed transferee, or both, must complete Federal Communications Commission Form 394 or its equivalent, and provide any other information required by the Agency which is relevant to the transferee's qualifications and capability to operate and maintain the cable system and comply with all franchise requirements. This application must be submitted to the Agency not less than one hundred and twenty (120) days prior to the proposed date of transfer. The transferee must establish that it possesses the legal, financial, and technical capability to operate and maintain the cable system and to comply with all franchise requirements during the

remaining term of the franchise in a substantially equivalent or greater manner than the transferor. If the legal, financial, and technical qualifications of the applicant are satisfactory and the applicant demonstrates that it will satisfy all franchise obligations, the Agency will consent to the transfer of the franchise. The consent of the Agency to that transfer will not be unreasonably denied or delayed.

5. Any financial institution holding a pledge of the Grantee's assets to secure the advance of money for the construction or operation of the franchise property has the right to notify the Agency that it, or a designee satisfactory to the Agency, will take control of and operate the cable television system upon the Grantee's default in its financial obligations. Further, that financial institution also must submit a plan for such operation within ninety (90) days after assuming control. The plan must insure continued service and compliance with all franchise requirements during the period that the financial institution will exercise control over the system. The financial institution may not exercise control over the system for a period exceeding one year unless authorized by the Agency, in its sole discretion, and during that period of time it will have the right to petition the Agency to transfer the franchise to another Grantee.

6. The Grantee must reimburse the Agency for the Agency's reasonable review and processing expenses incurred in connection with any transfer or change in control of the franchise. These expenses may include, without limitation, costs of administrative review, financial, legal, and technical evaluation of the proposed transferee, consultants (including technical and legal experts and all costs incurred by these experts), notice and publication costs, and document preparation expenses. The total amount of these reimbursable expenses may be subject to maximum limits that are specified in the franchise agreement between the Agency and the Grantee. No reimbursement may be offset against any franchise fee payable to the Agency during the remaining term of the franchise.

G. Geographical Coverage

1. Grantee must design, construct, and maintain the cable television system so as to have the capability to pass every dwelling unit in the franchise service area, subject to any service-area line extension requirements of the franchise agreement.

2. After service has been established by activating trunk or distribution cables for any service area, Grantee must provide service to any requesting subscriber in that service area within thirty (30) days from the date of request, provided that the Grantee is able to secure on reasonable terms and conditions all rights-of-way necessary to extend service to that subscriber within that 30-day period. Service to prospective subscribers residing in multiple dwelling units need only be provided if, after evaluating terms and conditions for access that may be imposed by an owner or manager of such multiple dwelling units, a Grantee determines that those terms and conditions are reasonably acceptable.

H. Nonexclusive Franchise

Every franchise granted is nonexclusive. The Agency specifically reserves the right to grant, at any time, such additional franchises for a cable television system,

or any component thereof, as it deems appropriate, subject to applicable state and federal law. If an additional franchise is proposed to be granted to a subsequent Grantee, a noticed public hearing must first be held in accordance with the provisions of Government Code § 53066.3.

I. Multiple Franchises

1. The Agency may grant any number of franchises, subject to applicable state and federal law. The Agency may limit the number of franchises granted, based upon, but not necessarily limited to, the requirements of applicable law and specific local considerations, such as:

a. The capacity of the public rights-of-way to accommodate multiple cables in addition to the cables, conduits, and pipes of the existing utility systems, such as electrical power, telephone, gas, and sewerage.

b. The benefits that may accrue to subscribers as a result of cable system competition, such as lower rates and improved service.

c. The disadvantages that may result from cable system competition, such as the requirement for multiple pedestals on residents' property, and the disruption arising from numerous excavations within the public rights-of-way.

2. The Agency may require that any new Grantee be responsible for its own underground trenching and the associated costs if, in the Agency's opinion, the rights-of-way in any particular area cannot reasonably accommodate additional cables.

Section 2.2 Franchise Applications and Renewal

A. Filing of Applications

Any person desiring an initial franchise for a cable television system must file an application with the Agency. A reasonable nonrefundable application fee in an amount established by resolution of the Agency must accompany the application. That application fee will cover all costs associated with reviewing and processing the application, including without limitation costs of administrative review, financial, legal, and technical evaluation of the applicant, consultants (including technical and legal experts and all costs incurred by those experts), notice and publication requirements, and document preparation expenses. If those costs exceed the application fee, the applicant must pay the difference to the Agency within thirty (30) days following receipt of an itemized statement of those costs.

B. Applications - Contents

An application for an initial franchise for a cable television system must contain, as applicable:

1. A statement as to the proposed franchise service area.

2. A resume of the applicant's prior history, including the experience and expertise of the applicant in the cable television and telecommunications industry.

3. A list of the partners, general and limited, of the applicant, if a partnership, or the percentage of stock owned or controlled by each stockholder, if a closely-held corporation. If the applicant is a publicly-owned corporation, each owner of 10 percent or more of the issued and outstanding capital stock must be identified.

4. A list of officers, directors, and managing employees of the applicant, together with a description of the background of each person on that list.

5. The names and addresses of any parent or subsidiary of the applicant, or any other business entity owning or controlling applicant in whole or in part, or that is owned or controlled in whole or in part by the applicant.

6. A current financial statement of the applicant verified by a certified public accountant or otherwise certified to be true, complete, and correct to the reasonable satisfaction of the Agency.

7. The proposed construction and service schedule, the proposed rate structure for cable services, and the proposed commitment to provide public, educational, and governmental access channel capacity, services, facilities, and equipment.

8. Any additional information that the Agency reasonably deems to be necessary.

C. Consideration of Initial Applications

1. Upon receipt of an application for an initial franchise, the Executive Director or the Executive Director's designee must prepare a report and make recommendations to the Agency concerning that application, including without limitation the applicant's legal, financial, and technical qualifications.

2. A public hearing will be noticed prior to the granting of any initial franchise, at a time and date approved by the Agency. Within thirty (30) days after the close of the hearing, the Agency will make a decision based upon the evidence received at the hearing as to whether the franchise should be granted, and, if granted, subject to what conditions. The Agency may grant one or more franchises, or may decline to grant any franchise.

D. Franchise Renewal

Franchise renewals will be processed in accordance with then-applicable law. The Agency and the Grantee, by mutual consent, may enter into renewal negotiations at any time during the term of the franchise.

Section 2.3 Contents of Cable Television Franchise Agreements

A. The terms and provisions of a franchise agreement for the operation of a cable television or related telecommunications services may relate to or include, without limitation, the following subject matters:

1. The nature, scope, geographical area, and duration of the franchise.
2. The applicable franchise fee to be paid to the Agency, including the percentage amount, the method of computation, and the time for payment.
3. Requirements relating to compliance with and implementation of state and federal laws and regulations pertaining to the operation of the cable television system.
4. Requirements relating to the construction, upgrade, or rebuild of the cable television system, as well as the provision of special services, such as outlets for public buildings, emergency alert capability, and parental control devices.
5. Requirements relating to the maintenance of a performance bond, a security fund, a letter of credit, or similar assurances to secure the performance of the Grantee's obligations under the franchise agreement.
6. Requirements relating to comprehensive liability insurance, workers' compensation insurance, and indemnification.
7. Requirements relating to consumer protection and customer service standards, including the resolution of subscriber complaints and disputes and the protection of subscribers' privacy rights.
8. Requirements relating to the Grantee's support of local cable usage, including the provision of public, educational, and governmental access channels, the coverage of public meetings and special events, and financial or technical support for public, educational, and governmental access channels.
9. Requirements relating to construction, operation, and maintenance of the cable television system within the public rights-of-way, including compliance with all applicable building codes and permit requirements, the abandonment, removal, or relocation of facilities, and compliance with FCC technical standards.
10. Requirements relating to recordkeeping, accounting procedures, reporting, periodic audits, and performance reviews, and the inspection of Grantee's books and records.
11. Acts or omissions constituting material breaches of or defaults under the franchise agreement, and the applicable penalties or remedies for those

breaches or defaults, including fines, penalties, liquidated damages, suspension, revocation, and termination.

12. Requirements relating to the sale, assignment, or other transfer or change in control of the franchise.

13. The Grantee's obligation to maintain continuity of service and to authorize, under certain specified circumstances, the Agency's operation and management of the cable system.

14. Such additional requirements, conditions, policies, and procedures as may be mutually agreed upon by the parties to the franchise agreement and that will, in the judgment of Agency staff and the Agency, best serve the public interest and protect the public health, welfare, and safety.

B. If there is any conflict or inconsistency between the provisions of a franchise agreement authorized by the Agency and provisions of this Article 2, the stricter provisions will control.

Section 2.4 Minimum Consumer Protection And Service Standards

A. Operational Standards

1. Except as otherwise provided in the franchise agreement, the Grantee must maintain the necessary facilities, equipment, and personnel to comply with the following consumer protection and service standards under normal operating conditions:

(a) Sufficient toll-free telephone line capacity during normal business hours to ensure that telephone calls are answered before the fourth ring. Telephone answer time by a customer service representative, including wait time, may not exceed thirty (30) seconds. Callers needing to be transferred may not be required to wait more than thirty (30) seconds before being connected to a service representative.

(b) Under normal operating conditions, a caller must receive a busy signal less than three percent (3%) of the time.

(c) Emergency toll-free telephone line capacity on a twenty-four (24) hour basis, including weekends and holidays. After normal business hours, the telephone calls may be answered by an answering service in accordance with the telephone answering standards set forth in subsections (a) and (b) above. Calls received after normal business hours must be responded to by a trained company representative on the next business day.

(d) A conveniently located local business and service or payment office open during normal business hours at least eight (8) hours daily on weekdays, and at least four (4) hours weekly on evenings or weekends, and adequately staffed with trained customer service representatives to accept subscriber payments and to respond to service requests, inquiries and complaints.

(e) An emergency system maintenance and repair staff, capable of responding to and repairing major system malfunctions on a twenty-four (24) hour per day basis.

(f) A trained installation staff must install service to any subscriber requiring a standard installation within seven (7) days after receipt of a request, in all areas where trunk and feeder cable have been activated. "Standard installations" are those that are located up to one hundred twenty-five (125) feet from the existing distribution system, unless otherwise defined in any franchise agreement.

(g) The Grantee must schedule, within a specified four (4) hour time period Monday through Saturday (legal holidays excluded), all appointments with subscribers for installation of service, service calls, and other activities at the subscriber location. The Grantee may schedule installation and service calls outside of normal business hours for the convenience of the subscriber. The Grantee may not cancel an appointment with a subscriber after the close of business on the business day prior to the scheduled appointment. If a Grantee representative is running late for an appointment with a subscriber and will not be able to keep the scheduled appointment, the subscriber must be contacted prior to the time of the scheduled appointment and the appointment must be rescheduled, as necessary, at a time that is convenient for the subscriber. The Grantee must use its best efforts to contact every customer within two weeks after an installation or repair work is completed to ensure that the customer is satisfied with the work.

(h) Subscribers who have experienced one (1) missed appointment due to the fault of the Grantee will receive an installation free of charge if the appointment was for an installation. If an installation was to have been provided free of charge, and for all other appointments, the subscriber will receive one (1) month of the subscribed to service tier, free of charge. Subscribers also will be entitled to receive a free installation or one (1) month free service as provided above in the event that the Grantee fails to complete a standard installation within five (5) days of receiving an installation request due to its fault, fails to schedule an appointment within a specified four (4) hour time period, or fails to contact the subscriber if the Grantee's representative will be late for an appointment. Subscribers who have experienced two (2) missed appointments due to the fault of the Grantee shall receive two (2) months of the subscribed to service tier, free of charge in addition to the free installation or free month of service provided for the first missed appointment.

(i) Upon subscriber request, the Grantee will arrange for pickup and/or replacement of convertors or other equipment provided by the Grantee at the subscriber's address within fourteen (14) days after the request is made if the subscriber is mobility-limited.

2. The standards of subsections (a) and (c) above shall be met not less than ninety percent (90%) of the time, measured on a quarterly basis.

B. Service Standards

1. The Grantee will render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Except in emergency situations, scheduled interruptions will occur during a period of minimum use of the cable system, preferably between midnight and 6:00 a.m. Unless the scheduled interruption lasts for no more than two hours and occurs between midnight and 6:00 a.m. (in which event twenty-four hours prior notice must be given to the Agency), forty-eight (48) hours prior notice must be given to subscribers.

2. The Grantee will maintain a repair force of technicians who will respond to subscriber requests for service within the following time frames:

(a) For a system outage: Within two (2) hours, including weekends, of receiving subscriber calls or requests for service that by number identify a system outage of sound or picture of one or more channels, affecting five or more subscribers of the system.

(b) For an isolated outage: Within twenty-four (24) hours, including weekends, of receiving requests for service identifying an isolated outage of sound or picture for one or more channels.

(c) For inferior signal quality: No later than the following business day, excluding Sundays and holidays, of receiving a request for service identifying a problem concerning picture or sound quality.

3. The Grantee will be deemed to have responded to a request for service under the provisions of this subsection B when a technician arrives at the service location and begins work on the problem. If a subscriber is not home when the technician arrives, the technician must leave written notification of arrival.

4. The Grantee may not charge for the repair or replacement of defective or malfunctioning equipment provided by the Grantee to subscribers, unless the defect was caused by the subscriber.

5. The Grantee must determine the nature of the problem within twenty-four (24) hours of commencing work and resolve all cable system related problems within three (3) business days, unless technically infeasible.

C. Billing and Information Standards

1. Subscriber bills must be clear, concise, and understandable. Bills must be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills also must clearly delineate all activity during the billing period, including optional charges, rebates, and credits.

2. The first billing to a subscriber after a new installation or service change must be prorated based upon when the new or changed service commenced. Subscribers

must not be charged a late fee or otherwise penalized for any failure by the Grantee, including the failure to timely or correctly bill the subscriber.

3. In case of a billing dispute, the Grantee must respond in writing to a written complaint from a subscriber within ten (10) days of receiving the complaint at the office clearly identified on the billing statement for receiving such complaint.

4. The Grantee must provide credits or refunds to subscribers whose service has been interrupted for four (4) or more hours upon request from the affected subscribers. For each day that service has been interrupted for four (4) hours or more, the credit must equal a pro-rata share of the monthly billing for one full day. All credits for service must be issued no later than the customer's next billing cycle following the determination that a credit is warranted. For subscribers terminating service, refunds must be issued promptly, but no later than thirty (30) days after the return of any Grantee-supplied equipment.

5. The Grantee must provide written information which has been reviewed by the Agency on each of the following areas at the time of the installation of service, at least annually to all subscribers, and at any time upon request:

- (a) Products and services offered.
- (b) Prices and options for programming services and conditions of subscription to programming and other services.
- (c) Installation and service maintenance policies.
- (d) Instructions on the use of the cable service.
- (e) Channel positions of programming carried on the system.
- (f) Billing and complaint procedures, including the address and telephone number of the Agency's office designated for dealing with cable-related issues.
- (g) Consumer protection and service standards and penalties for noncompliance.

6. Subscribers must be notified of any changes in rates, programming services, or channel positions as soon as possible through announcements on the cable system and in writing. Notice must be given to subscribers a minimum of thirty (30) days in advance of those changes if the change is within the control of the Grantee. In addition, the Grantee must notify subscribers through announcements on the cable system and in writing thirty (30) days in advance of any significant changes in the information required in subsection (5) above.

7. The Grantee must maintain a public file containing all notices provided to subscribers under these consumer protection and service standards and all promotional offers made by Grantee to subscribers. Such documents must be maintained for a minimum period of four (4) years.

D. Verification of Compliance with Standards

1. Upon fifteen (15) days written notice, the Agency may require the Grantee to provide a written report demonstrating its compliance with any of the customer service standards specified in this Section 2.4. The Grantee must provide sufficient documentation to enable the Agency to verify compliance.

2. A repeated and verifiable pattern of noncompliance with the consumer protection and service standards of Section 2.4, after the Grantee's receipt of written notice and an opportunity to cure, may be deemed a material breach of the franchise agreement.

E. Subscriber Complaints and Disputes

1. The Grantee must establish written procedures for receiving, acting upon, and resolving subscriber complaints without intervention by the Agency. The written procedures must prescribe the manner in which a subscriber may submit a complaint, either orally or in writing, specifying the subscriber's grounds for dissatisfaction. The Grantee must file a copy of these procedures with the Agency. These procedures must include a requirement that the Grantee respond in writing to any written complaint from a subscriber within ten (10) days of receiving the complaint at the office clearly identified on the billing statement for receiving such complaint.

2. The Agency has the right to review the Grantee's response to subscriber complaints in order to determine the Grantee's compliance with the franchise requirements.

3. All subscribers have the right to continue receiving service so long as their financial and other obligations to the Grantee are honored. If the Grantee elects to rebuild, modify, or sell the system, or if the Agency gives notice of intent to terminate or not to renew the franchise, the Grantee must act so as to ensure that all subscribers receive service while the franchise remains in force.

4. Upon a change of control of the Grantee, or if a new operator acquires the cable system, the original Grantee must cooperate with the Agency, the new Grantee, or the new operator in maintaining continuity of service to all subscribers. During that transition period, the Grantee is entitled to the revenues derived from its operation of the system.

F. Disconnection/Downgrades

1. A subscriber may terminate or downgrade service at any time, and the Grantee must promptly comply with the subscriber's request within five (5) days or at the time requested by the subscriber. No period of notice prior to voluntary termination or downgrade of service may be required of subscribers. Grantee will impose no charges for the voluntary termination or downgrade of service unless a visit to the subscriber's premises is required to remove a converter box or other equipment or property owned by Grantee.

2. The Grantee may disconnect a subscriber's service if the subscriber fails to pay a monthly fee or charge, but such disconnection must not occur prior to forty-five

(45) days after the fee or charge is due plus ten (10) days prior written notice to the subscriber of the Grantee's intent to disconnect service. In the event that the subscriber pays all past due amounts, including late charges, before the scheduled disconnection date, the Grantee may not disconnect service. In the event that service is disconnected for nonpayment of past due fees or charges, the Grantee must promptly reinstate service upon payment by the subscriber in full of all such fees and charges, including late charges.

3. Notwithstanding the requirements of subsection F(2) above, the Grantee may immediately disconnect service to a subscriber if the subscriber is damaging or destroying the Grantee's cable system or equipment. In the event of disconnection on such grounds, the Grantee will resume service to the subscriber upon receiving adequate assurances that the subscriber has ceased the practices or conduct that resulted in disconnection and has paid all proper fees and charges, including any amounts reasonably owed the Grantee for the damage caused by the subscriber.

4. The Grantee also may disconnect service to a subscriber that is causing signal leakage exceeding federal limits. In the event that service is disconnected, the Grantee will immediately resume service without charge upon the satisfactory correction of the signal leakage problem.

5. Upon termination of service to a subscriber, the Grantee will remove its equipment from the subscriber's premises within thirty (30) days. The equipment will be deemed abandoned if it is not removed within such time period unless the Grantee has been denied access to the subscriber's premises.

G. Changes in Service

Except as otherwise provided by federal law, subscribers must not be required to pay any additional fee or charge, other than the regular service fee, in order to receive the services selected (such as upgrade or downgrade charges). No charge may be imposed for any service or product that the subscriber has not affirmatively selected. Payment of the regular monthly bill will not by itself constitute an affirmative selection.

H. Deposits

The Grantee may require a reasonable, nondiscriminatory deposit on equipment provided to subscribers. Such deposits must be placed in an interest bearing account. The deposit must be returned, with interest earned to the date of repayment, within thirty (30) days after the equipment is returned to the Grantee.

I. Parental Control Option

The Grantee must provide parental control devices to all subscribers who want to be able to block the video or audio portion of any programming that the subscriber finds objectionable. Such devices will be provided at no charge to the subscriber, unless otherwise required by federal law or unless a converter box is required to be installed for the purpose of providing the parental control device.

J. Additional Requirements

1. If the Grantee fails to operate the system for seven (7) consecutive days without the Agency's prior approval or subsequent ratification, the Agency may, at its sole option, operate the system or designate an operator until the Grantee restores service under conditions acceptable to the Agency, or until a permanent operator is selected. If the Agency satisfies this obligation on behalf of the Grantee, then during that time period the Agency is entitled to collect all revenues derived from the system, and the Grantee will indemnify the Agency against any damages that the Agency may suffer as a result of the Grantee's failure to operate the system.

2. All officers, agents, or employees of the Grantee, or its contractors or subcontractors, who, in the normal course of work come into contact with members of the public, or who require entry onto subscribers' premises, must carry a photo- identification card in a form approved by the Agency. The Grantee must account for all identification cards at all times. All vehicles of the Grantee or its subcontractors shall be clearly identified as vehicles engaged in providing services for the Grantee.

3. Additional standards relating to service, consumer protection, and response by the Grantee to subscriber complaints not otherwise provided for in this ordinance may be established in the franchise agreement or by separate ordinance, and the Grantee must comply with those standards in the operation of the cable television system. A verified and continuing pattern of noncompliance may be deemed a material breach of the franchise, provided that the Grantee receives written notice and an opportunity to cure, before any remedy is imposed.

K. Penalties for Noncompliance

1. Purpose. The purpose of this subsection is to impose penalties for the violation of the customer service standards established by this ordinance as authorized by the Video Customer Service Act (Government Code Section 53088 et seq.). These penalties are in addition to any other remedies provided by this ordinance, the franchise agreement or any other law, and the Agency has the discretion to elect which remedy it will apply. The imposition of penalties pursuant to this section will not prevent the Agency or any other affected party from exercising any other remedy to the extent permitted by law, including but not limited to any judicial remedy as provided by Subsection K(2)(d).

2. Administration and Appeals.

a. The Executive Director or the Director's designee is authorized to administer this subsection. Decisions by the Executive Director to assess penalties against the Grantee shall be in writing and shall contain findings supporting the decisions. Decisions by the Executive Director shall be final, unless appealed to the Board of Directors.

b. In the event that the Grantee or any interested person is aggrieved by a decision of the Executive Director, the aggrieved party may, within ten (10) days of the written decision, appeal that decision in writing to the Board of Directors. The appeal

letter must be accompanied by the fee established by the Board for processing the appeal. The Board may affirm, modify, or reverse the decision of the Executive Director.

c. **Schedule of Penalties.** The following schedule of monetary penalties may be assessed against the Grantee for material breach of the provisions of the customer service standards set forth in this ordinance, provided the breach is not out of the reasonable control of the Grantee.

i. The maximum penalty shall be two hundred dollars for each day of material breach, but shall not exceed six hundred dollars for each occurrence of the material breach.

ii. For a second material breach of the same nature within a twelve-month period for which the Agency has provided notice and a penalty has been assessed, the maximum penalty shall be four hundred dollars for each day of the material breach, but shall not exceed one thousand two hundred dollars for each occurrence of the material breach.

iii. For a third material breach of the same nature within a twelve-month period for which the Agency has provided notice and a penalty has been assessed, the maximum penalty shall be one thousand dollars for each day of the material breach, but shall not exceed three thousand dollars for each occurrence of the material breach.

iv. The above maximum penalties may be increased by any additional amount authorized by state law.

d. **Judicial Remedy.** This section shall not preclude any affected party from utilizing any judicial remedy available to that party without regard to this section.

e. **Notification of Breach.** The Agency shall give the Grantee written notice of any alleged breaches of the consumer service standards and allow the Grantee at least thirty (30) days from receipt of the notice to remedy the specified breach. For the purpose of assessing penalties, a material breach shall be deemed to have occurred for each day, following the expiration of the period specified herein, that any breach has not been remedied by the Grantee, irrespective of the number of subscribers affected.

L. Free Service for Noncompliance

Notwithstanding any other penalties or remedies provided by this ordinance, the franchise agreement or any other law, the Grantee shall provide the following months of free service to subscribers affected by the Grantee's failure to comply with the specified consumer protection and service standard:

1. **One (1) Month Free Service.** The Grantee will provide one (1) month of free service to each subscriber affected by the failure of the Grantee to timely and satisfactorily comply with any of the following requirements:

- a. Pick-up and/or replacement of converters or other equipment within fourteen (14) days after subscriber request. (Section 2.4(A)(1)(i).)
- b. Forty-eight (48) hour notice of service interruption. (Section 2.4(B)(1).)
- c. Response time for system outages and inferior signal quality. (Section 2.4(B)(2).)
- d. Resolution of cable system related problems within three (3) business days. (Section 2.4(B)(5).) One (1) additional month of free service will be provided for each seven-day period that the problem remains unresolved.
- e. Written response to billing complaints. (Section 2.4(C)(3).)
- f. Credits and refunds. (Section 2.4(C)(4).)
- g. Provision of all required information to subscribers. (Section 2.4(C)(5).)
- h. Notification of rate, service or channel changes. (Section 2.4(C)(6).)
- i. Completion of termination or downgrade of service. (Section 2.4(F)(1).)
- j. Provision of parental control devices.

2. Three (3) Months Free Service. The Grantee will provide three (3) months of free service to each subscriber affected by the failure of the Grantee to timely and satisfactorily comply with the following requirements:

- a. Disconnection of subscriber service without just cause provided that Grantee fails to restore service within four (4) hours after the disconnection. (Section 2.4(F)(2).)

3. Definition of free service. The free service required by this Section 2.4(L) shall consist of the service tier subscribed to by the affected subscriber.

ARTICLE 3. OPEN VIDEO SYSTEMS

Section 3.0 Applicability

The provisions of this Article 3 are applicable to an open video system operator, as defined below in Article 1, that intends to deliver video programming to consumers within the jurisdiction of the Agency over an open video system, as authorized by 47 CFR Part 76.

Section 3.1 Application Required

A. Before commencing the delivery of video programming services to consumers within the jurisdiction of the Agency over an open video system, the open video system operator must file an application with the Agency. The application must include or be accompanied by the following, as applicable:

1. The identity of the applicant, including all affiliates of the applicant.
2. Copies of FCC Form 1275, all "Notices of Intent" filed under 47 CFR § 76.1503(b)(1), and the Order of the FCC, all of which relate to certification of the applicant to operate an open video system in accordance with Section 653(a)(1) of the Communications Act and the FCC's rules.
3. The area or areas that the applicant desires to serve.
4. A description of the open video system services that will be offered by the applicant over its existing or proposed facilities.
5. A description of the transmission medium that will be used by the applicant to deliver the open video system services.
6. Information in sufficient detail to establish the applicant's technical qualifications, experience, and expertise regarding the ownership and operation of the open video system described in the application.
7. Financial statements prepared in accordance with generally accepted accounting principles that demonstrate the applicant's financial ability to:
 - a. Construct, operate, maintain and remove any new physical plant that is proposed to be constructed.
 - b. Comply with the Agency's public, educational, and governmental access requirements as specified below in Section 3.3(B)(4).
 - c. Comply with the Agency's requirement that gross revenue fees be paid in the sum of five percent (5%), as specified below in Section 3.3(B)(2).
8. An accurate map showing the location of any existing telecommunications facilities within the jurisdiction of the Agency that the applicant intends to use, to purchase, or to lease.
9. If the applicant's operation of the open video system will require the construction of new physical plant and facilities, the following additional information must be provided:

- a. A preliminary construction schedule and completion dates.
- b. Preliminary engineering plans, specifications, and a network map of any new facilities to be constructed, in sufficient detail to identify:
 - (i) The location and route requested for the applicant's proposed facilities.
 - (ii) The locations, if any, for interconnection with the facilities of other telecommunications service providers.
 - (iii) The specific structures, improvements, facilities, and obstructions, if any, that the applicant proposes to remove or relocate on a temporary or permanent basis.
- c. The applicant's statement that, in constructing any new physical plant, the applicant will comply with all applicable ordinances, rules, and regulations, including the payment of all required permit and processing fees.

10. The information and documentation that is required to be submitted to the Agency by a video provider, as specified below in Section 4.1(B).

11. Such additional information as may be requested by the Executive Director.

12. A nonrefundable filing fee in an amount established by resolution of the Agency.

B. If any item of information specified above in subsection (A) is determined under federal or state law to be unlawful, the Executive Director is authorized to waive the requirement that such information be included in the application.

Section 3.2 Review of the Application

Within thirty (30) days after receipt of an application filed under Section 3.1 that the Executive Director deems to be complete, the Executive Director will give written notice to the applicant of the Agency's intent to negotiate an agreement setting forth the terms and conditions under which the operation of the proposed open video system will be authorized by the Agency. The commencement of those negotiations will be on a date that is mutually acceptable to the Agency and to the applicant.

Section 3.1 Agreement Required

A. No video programming services may be provided within the Agency's jurisdiction by an open video system operator unless the operator and the Agency have executed a written agreement setting forth the terms and conditions under which the operation of the proposed open video system will be authorized by the Agency.

B. The agreement between the Agency and the open video system operator may contain terms and conditions that relate to the following subject matters, to the extent that such terms, conditions, and subject matters are not preempted by federal law:

1. The nature, scope, and duration of the agreement, including provisions for its renewal or extension.

2. The obligation of the open video system operator to pay to the Agency, at specified times, fees on the gross revenues received by the operator, as authorized by 47 CFR § 76.1511, in accordance with the following standards and procedures:

a. The amount of the fees on the gross revenues will be five percent (5%), and will be paid in lieu of the franchise fees permitted under Section 622 of the Communications Act.

b. The term "gross revenues" means (i) all gross revenues received by an open video system operator or its affiliates, including all revenues received from subscribers and all carriage revenues received from unaffiliated video programming providers; and (ii) all advertising revenues received by the operator or its affiliates in connection with the provision of video programming, where these revenues are included in the calculation of the cable franchise fee paid to the Agency by the franchised cable operator. The term "gross revenues" does not include revenues, such as subscriber or advertising revenues, collected by unaffiliated video programming providers.

3. The obligation of the open video system operator to comply with requirements relating to information collection and recordkeeping, accounting procedures, reporting, periodic audits, and inspection of records in order to ensure the accuracy of the fees on the gross revenues that are required to be paid as specified above in subsection (B)(2).

4. The obligation of the open video system operator to meet the Agency's requirements with respect to public, educational, and governmental access channel capacity, services, facilities, and equipment, as provided for in 47 CFR § 76.1505. In this regard, the following standards and procedures are applicable:

a. The open video system operator is subject to the same public, educational, and governmental access requirements that apply within the cable television franchise service area with which its system overlaps.

b. The open video system operator must ensure that all subscribers receive all public, educational, and governmental access channels within the franchise service area in which the Agency's subscribers are located.

c. The open video system operator may negotiate with the Agency to establish the operator's obligations with respect to public, educational, and governmental access channel capacity, services, facilities, and equipment. These negotiations may include the Agency's franchised cable operator if the Agency, the open video system operator, and the franchised cable operator so desire.

d. If the open video system operator and the Agency are unable to reach an agreement regarding the operator's obligations with respect to public, educational, and governmental access channel capacity, services, facilities, and equipment within the Agency's jurisdiction, then the following obligations will be imposed:

(i) The open video system operator must satisfy the same public, educational, and governmental access obligations as the Agency's franchised cable operator by providing the same amount of channel capacity for public, educational, and governmental access and by matching the Agency's franchised cable operator's annual financial contributions in support of public, educational, and governmental access services, facilities, and equipment. For in-kind contributions, such as cameras or production studios, the open video system operator may satisfy its statutory obligation by negotiating mutually agreeable terms with the Agency's franchised cable operator, so that public, educational, and governmental access services to the Agency are improved or increased. If these terms cannot be agreed upon, the open video system operator must pay to the Agency the monetary equivalent of the franchised cable operator's depreciated in-kind contribution, or, in the case of facilities, the annual amortization value. Any matching contributions provided by the open video system operator must be used to fund public, educational, and governmental access activities provided under Section 611 of the Communications Act.

(ii) The Agency will impose upon the open video system operator the same rules and procedures that it imposes upon the franchised cable operator with regard to the open video system operator's use of channel capacity designated for public, educational, and governmental access use when that capacity is not being used for these purposes.

e. The Agency's franchised cable operator is required under federal law to permit the open video system operator to connect with its public, educational, and governmental access channel feeds. The open video system operator and the franchised cable operator may decide how to accomplish this connection, taking into consideration the physical and technical characteristics of the cable and the open video systems involved. If the franchised cable operator and the open video system operator cannot agree on how to accomplish the connection, the Agency has the right to decide. The Agency may require that the connection occur on publicly-owned property or on public rights-of-way.

f. All costs of connection to the franchised cable operator's public, educational, and governmental access channel feed must be borne by the open video system operator. These costs will be counted towards the open video system operator's matching financial contributions set forth above in subsection (d)(i).

g. The Agency will not impose upon the open video system operator any public, educational, or governmental access obligations that are greater than those imposed upon the franchised cable operator.

h. If there is no existing franchised cable operator, the provisions of 47 CFR § 76.1505(d)(6) will be applicable in determining the obligations of the open video system operator.

i. The open video system operator must adjust its system to comply with new public, educational, and access obligations imposed on the Agency's franchised cable operator following a renewal of the cable television franchise; provided, however, that the open video system operator will not be required to displace other programmers using its open video system to accommodate public, educational, and governmental access channels. The open video system operator must comply with these new public, educational, and governmental access obligations whenever additional capacity is or becomes available, whether it is due to increased channel capacity or to decreased demand for channel capacity.

5. If the Agency and the open video system operator cannot agree as to the application of the FCC's rules regarding the open video system operator's obligations to provide public, educational, and governmental access under the provisions of subsection (4) set forth above, then either party may file a complaint with the FCC in accordance with the dispute resolution procedures set forth in 47 CFR § 76.1514. No agreement under this Section 11 authorizing an applicant to provide services over an open video system will be executed by the Agency until the dispute has been finally resolved.

6. If the open video system operator intends to maintain an institutional network, as defined in Section 611(f) of the Communications Act, the Agency will require that educational and governmental access channels be designated on that institutional network to the same extent that those channels are designated on the institutional network of the Agency's franchised cable operator.

7. The authority of an open video system provider to exercise editorial control over any public, educational, or governmental use of channel capacity will be restricted in accordance with the provisions of 47 CFR § 76.1505(f).

8. The obligation of the open video system operator to comply with all applicable federal and state statutes and regulations relating to customer service standards, including the Cable Television and Video Customer Service and Information Act (Government Code §§ 53054, et seq.), and the Video Customer Service Act (Government Code §§ 53088, et seq.)

9. If new physical plant is proposed to be constructed, the obligation of the open video system operator to comply with the following rights-of-way use and management responsibilities that are also imposed by the Agency upon other telecommunications service providers in a nondiscriminatory and competitively neutral manner:

a. Compliance with all applicable building and zoning codes, including applications for excavation, encroachment, and construction permits and the payment of all required permit and inspection fees.

b. The coordination of construction requirements.

c. Compliance with established standards and procedures for constructing lines across private property.

- d. Compliance with all applicable insurance and indemnification requirements.
 - e. The repair and resurfacing of construction-damaged streets.
 - f. Compliance with all public safety requirements that are applicable to telecommunications service providers using public property or public rights-of-way.
10. Acts or omissions constituting breaches or defaults of the agreement, and the applicable penalties, liquidated damages, and other remedies, including fines or the suspension, revocation, or termination of the agreement.
 11. Requirements relating to the sale, assignment, or transfer of the open video system.
 12. Requirements relating to the open video system operator's compliance with and implementation of state and federal laws, rules, and regulations pertaining to the operation of the open video system.
 13. Such additional requirements, conditions, terms, policies, and procedures as may be mutually agreed upon by the Agency and the open video system operator and that will, in the judgment of the Agency, best serve the public interest and protect the public health, welfare, and safety.

ARTICLE 4. OTHER TELECOMMUNICATIONS SERVICES AND SYSTEMS

Section 4.0 Other Multichannel Video Programming Distributors

The term "cable system," as defined in federal law and as set forth in Article 1, does not include a facility that serves subscribers without using any public rights-of-way. Consequently, the categories of multichannel video programming distributors identified below are not deemed to be "cable systems" and are therefore exempt under federal law from the Agency's franchise requirements and from certain other local regulatory provisions authorized by federal law, provided that their distribution or transmission facilities do not involve the use of any public rights-of-way.

- A. Multichannel multipoint distribution service ("MMDS"), also known as "wireless cable," which typically involves the transmission by an FCC-licensed operator of numerous broadcast stations from a central location using line-of-sight technology.
- B. Local multipoint distribution service ("LMDS"), another form of over-the-air wireless video service for which licenses are auctioned by the FCC, and which offers video programming, telephony, and data networking services.

C. Direct broadcast satellite ("DBS"), also referred to as "direct-to-home satellite services," which involves the distribution or broadcasting of programming or services by satellite directly to the subscriber's premises without the use of ground receiving or distribution equipment, except at the subscriber's premises or in the uplink process to the satellite. Local regulation of direct-to-home satellite services is further proscribed by the following federal statutory provisions:

1. 47 U.S.C. § 303(v) confers upon the FCC exclusive jurisdiction to regulate the provision of direct-to-home satellite services.

2. Section 602 of the Communications Act states that a provider of direct-to-home satellite service is exempt from the collection or remittance, or both, of any tax or fee imposed by any local taxing jurisdiction on direct-to-home satellite service. The terms "tax" and "fee" are defined by federal statute to mean any local sales tax, local use tax, local intangible tax, local income tax, business license tax, utility tax, privilege tax, gross receipts tax, excise tax, franchise fees, local telecommunications tax, or any other tax, license, or fee that is imposed for the privilege of doing business, regulating, or raising revenue for a local taxing jurisdiction.

Section 4.1 Video Providers - Registration; Customer Service Standards

A. Unless the customer protection and customer service obligations of a video provider, as that term is defined in Article 1, are specified in a franchise, license, lease, or similar written agreement with the Agency, a video provider must comply with all applicable provisions of the following state statutes:

1. The Cable Television and Video Customer Service and Information Act (Government Code § 53054, et seq.)

2. The Video Customer Service Act (Government Code § 53088, et seq.)

B. All video providers that are operating within the Agency's jurisdiction on the effective date of this ordinance, or that intend to operate in this jurisdiction after the effective date of this ordinance, must register with the Agency; provided, however, that this registration requirement is not applicable to any video provider that has executed a franchise, license, lease or similar written agreement with the Agency. The registration form must include or be accompanied by the following:

1. The video provider's name, address, and local telephone numbers, including a 24-hour telephone number for emergency service.

2. The names of the officers, the general manager, and principal technical staff members of the video provider.

3. A copy of the video provider's written policies and procedures relating to customer service standards and the handling

of customer complaints, as required by Government Code § 53054, et seq. These customer service standards must include, without limitation, standards regarding the following:

- a. Installation, disconnection, service and repair obligations, employee identification, and service call response time and scheduling.
- b. Customer service telephone and office hours.
- c. Procedures for billing, charges, refunds, and credits.
- d. Procedures for termination of service.
- e. Notice of the deletion of a programming service, the changing of channel assignments, or an increase in rates.
- f. Complaint procedures and procedures for bill dispute resolution.
- g. The video provider's written commitment to distribute annually to the Agency, and to the provider's employees and customers, a notice describing the customer service standards specified above in subsections (a) through (f). This annual notice must include the report of the video provider on its performance in meeting its customer service standards, as required by Government Code § 53055.2.

4. Unless a video provider is exempt under federal law from its payment, a registration fee in an amount established by resolution of the Agency to cover the costs reasonably incurred by the Agency in reviewing and processing the registration form.

5. In addition to the registration fee specified above in subsection (4), the written commitment of the video provider to pay to the Agency, when due, all costs and expenses reasonably incurred by the Agency in resolving any disputes between the video provider and its subscribers, which dispute resolution is mandated by Government Code § 53088.2(o).

C. The Agency may establish by ordinance a schedule of monetary penalties for the material breach by a video provider of its obligations under subsections (a) through (n) of Government Code § 53088.2. As used herein, the term "material breach" means any substantial and repeated failure to comply with the consumer service standards set forth in Government Code § 53088.2. The provisions of that ordinance must be consistent with the provisions of Government Code § 53088.2. The schedule of monetary penalties may also impose a penalty, as authorized by Government Code § 53056(a), for the failure of a video provider to distribute the annual notice required by Government Code § 53055.1, which penalty

may not exceed \$500 for each year in which the notice is not distributed as required by state statute.

ARTICLE 5. VIOLATIONS; SEVERABILITY

Section 5.0 Violations; Enforcement

A. Any person who willfully violates any provision of this ordinance is guilty of a misdemeanor and is punishable as provided for in state law.

B. The misdemeanor penalty specified above in paragraph (A) is not applicable to a violation of any provision of this ordinance for which another sanction or penalty may be imposed under any franchise, license, lease, or similar written agreement between the Agency and a multichannel video programming distributor or other telecommunications service provider.

C. The Agency may initiate a civil action in any court of competent jurisdiction to enjoin any violation of this ordinance.

Section 5.1 Severability

If any provision of this ordinance is rendered invalid by any court of competent jurisdiction, or by any federal or state agency having jurisdiction over its subject matter, or is determined by that court or agency to require modification in order to conform to the requirements of any paramount law or regulation, then that provision will be deemed a separate, distinct, and independent part of this ordinance, and such invalidity will not affect the validity and enforceability of any other provisions. If any paramount federal or state law or regulation is subsequently repealed or amended so that the provision of this ordinance that is rendered invalid or subject to modification is no longer in conflict with that law or regulation, then that provision will again become effective and will thereafter be binding on the Agency and any affected cable operator or telecommunications service provider; provided, however, that the Agency must give the affected cable operator or telecommunications service provider thirty (30) days written notice of that change before requiring compliance with that provision, or such longer period of time as may be reasonably required for the cable operator or telecommunications service provider to comply with that provision."

SECTION 2. The Executive Director is directed to certify to the passage and adoption of this ordinance and to cause this ordinance to be published as required by law.

PASSED, APPROVED and ADOPTED this ___ day of _____, 2004.

CHAIRMAN

ATTEST:

ROD GOULD
EXECUTIVE DIRECTOR